1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

gate the general cultural background of the Shoshones and to determine, if possible, the basic legal patterns of the Shoshones for comparative reference to those revealed by the Comanches. The comparative results and inferences may be found in Appendix A of this memoir.

With the enlisted interest of the American Council of Learned Societies resulting from the findings in Comanche and Shoshone culture, the Committee on Law History set up a project on American Indian law. In 1935 and 1936 the Committee projected a study of Cheyenne political and legal institutions which was carried out by the present author in collaboration with Karl Llewellyn. Cheyenne institutions reveal much in common with those found in Comanche society, for the economic base of both cultures is similar. Cheyenne culture is more sophisticated than Comanche; less adolescent, one might say. Comparatively, Cheyenne behavior represents a higher level of institutionalization, thus providing to a degree an extension of Comanche trends. The Cheyenne materials are being prepared for separate publication.

121 671 153 128 In studying Comanche legal institutions one must proceed by means of case histories. The Comanches underformalized their conception of their own behavior. To them legal action was merely an individual response to a threatening circumstance. It was not the playing of a role in a set legal institution. Thus the Comanches had no concept of law as an institution, or even as a set of rules. So, when the Comanche informant is asked such a question as this, "What was the rule when one man ran off with another's wife?", the answer comes in this form, "Well, I don't know about that. But I can tell you what happened when my uncle stole Horned Toad's wife." The Comanche and the case-trained American lawman proceed in like manner. What holds perforce for the Comanche should hold for the study of all primitive law. Legal behavior is *behavior* and should be treated as such. Malinowski has long since laid down the canon that behavior-in-fact is by no means in accord with the verbalized ideal to which a society may may give lip-service. The verbalized ideal is an important cultural fact when such ideal exists, but the actual conduct of a people is of more fundamental count. The verbalized ideal of the Comanche is the supremacy and free action of the individual. Case histories, when piled up, show that there were limiting legal mechanisms at work, however. The liberal use of case histories in the text is not for the purpose of providing interesting anecdote. The histories hold within themselves the juice of life-situations, revealing the sway and counter-play of emotion and motive, demonstrating the broad range of variability in conduct in given situations. Case histories give the native's coloring to the report, transmitting to the reader the *imponderabilia of native life* which Malinowski so aptly insists be given.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

IS THERE LAW? AN ANTHROPOLOGICAL HYPOTHESIS

We are now ready to address that most vital problem related to social conduct: What are the techniques for adjudicating grievances and conflicts of interests? The practical absence of a recognized authority makes the machinery relied upon by the Comanches just that much more significant for the student of jurisprudence and social control. Here we are confronted with legal patterns which are more than mere custom, with norms as to which there is no binding force of hypertrophied reciprocal obligations as in Melanesia, norms which exist without the sustaining force of courts, or police, or other expression of state sovereignty. Since sibs were lacking and associations nearly so, there were no permanent organizations which functioned as equivalents of what we know as government.

No prevailing concept of the nature of law as given in current definitions will fit the facts as we find them in Comanche society. The ideology of orthodox political science and jurisprudence, expressed in terms of "commands of the sovereign," "rules of the state," "an obligation imposed by the law-maker" have no meaning here, nor in the data pertaining to most primitive societies. Not even so sociologically oriented a definition of the law as that advanced by the late Justice Cardozo serves to fit the needs of an anthropological approach to jurisprudence. For when he writes that a principle or rule of law is "a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged,"[1] we must conclude: "no courts; no laws."

Professor Malinowski's "anthropological definition of law," to wit, "civil law, the primitive law governing all the phases of tribal life, consists of a body of binding obligations, regarded as a right by one party and acknowledged as a duty by the other, and kept in force by a specific mechanism of reciprocity and publicity inherent in the structure of their society," is really so meaningless from a legal point of view as to be useless in the development of a comparative jurisprudence.[2]

In Comanche society reciprocity is not developed to an exaggerated

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[1] Benjamin Cardozo, *The Growth of the Law* (New York, 1924), p. 52. Compare also MacIver's "Law is the body of rules which are recognised, interpreted and applied to particular situations by the courts of the state." R. I. MacIver, *Society: Its Structure and Changes* (New York, 1932), p. 272.

[2] Bronislaw Malinowski, *Crime and Custom in Savage Society* (New York, 1926), p. 58. For the debunking of Malinowski's *Crime and Custom* see William Seagle, *Primitive Law and Professor Malinowski* (American Anthropologist, vol. 39, 1937), pp. 275–290.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

● 671 121 degree, so that Malinowski's approach is even less applicable here than it might be elsewhere.

Without courts and without strongly developed obligations of reciprocity to serve as criteria of law, what then is there in Comanche practice that can be identified with what can reasonably be considered "law"? Professor Radcliffe-Brown and Professor Malinowski are at one in agreeing that rules of law are distinguishable from rules of custom as such. The point of distinction is their point of departure. The road taken by Radcliffe-Brown is the road which points us on the way to our working hypothesis. Brown's essential point is that customs (of various types) and laws are both social norms, distinguishable not on the basis of content, but in accordance with the type of sanction which is attached to the norm. However, the tripartate categories (with their subdivisions) of social sanctions developed by Radcliffe-Brown did not prove to be useful in this study.[3]

121 The identification of the legal sanction is the moot problem in the discovery of a working hypothesis for law in society. Interestingly enough, it is in a one-time conceptualization of law formulated by Professor Malinowski that the idea to be developed in this study was found. The hypothesis arrived at by the present author is a development and refinement of a principle since discarded (or forgotten?) by him. In Malinowski's first work he wrote, "A given social norm or rule is legal if it is enforced by a direct, organized, and definite social sanction."[4] This was in 1912. "Direct," "organized," and "definite" do not definitely clarify the nature of the sanctions Malinowski had in mind, but the attributes of the legal sanctions are indicated in these words.

Customs do have sanctions of different kind and degree, and since what we know as law consists in some perceptible external pressure restraining men or coercing them to conform to certain prescribed standards of conduct, then if such coercive sanctions exist in primitive societies, we are confronted

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[3] A. R. Radcliffe-Brown, *Social Sanctions* (Encyclopaedia of the Social Sciences, vol. 13, 1935), pp. 531–534. Also *Primitive Law* (Encyclopaedia of the Social Sciences, vol. 10, 1935), pp. 202–206. The author is also directly indebted to Dr. Brown for stimulating his thinking on the role of sanctions with a lucid discussion of his (Radcliffe-Brown's) concepts in personal conversation in the summer of 1932.

The limitations of the categorical approach of Professor Radcliffe-Brown are clearly shown when it is applied to a specific problem as has been done by Dr. John H. Provinse in his study of *The Underlying Sanctions of Plains Indian Culture* (*Social Anthropology of North American Tribes*, ed., Fred Eggan, Chicago, 1937), pp. 341–374.

[4] Bronislaw Malinowski, *The Family Life of the Australian Aborigines* (London, 1912), p. 115.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

121 society, is a legal sanction. The same would apply to similar actions of any group within the society toward members of the group, even when the sanction is applied for the violation of rules which are peculiar to the particular class of persons belonging to the punishing group.

121 The Comanche materials which are to follow serve to demonstrate (as one example) that in primitive society the application of law is not limited 671 to the "political state," whatever that may be, nor even to government. When this fact is realized it will also be seen that "law" in our own society is somewhat more than has ordinarily been allowed. "Primitive law" is the henchman of Legal Realism.[6]

[6] See, Roscoe Pound, *The Call for a Realistic Jurisprudence* (Harvard Law Review, vol. 44, 1930), pp. 697–711. And, K. N. Llewellyn, *A Realistic Jurisprudence—The Next Step* (Columbia Law Review, vol. 30, 1930), pp. 431–461.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

LEGAL ACTIONS IN ADULTERY AND WIFE-STEALING

CONFLICTS IN MARITAL LAW AND SOCIAL CUSTOM

Though it was illegal for a Comanche wife to desert her husband, to do so was a well established Comanche custom. More than that, custom provided for effective group cooperation in extension of aid to the would-be deserting wife and her absconder. Custom and law worked at cross-purposes. The cause lay in the clash of two opposing fundamental interests which could not be integrated. The result was such "lawless" behavior as Mr. Jerome Frank describes as arising from the "pretend rules" which are so common in human societies, rules which give expression in law to principles mouthed but not wholly believed in.[1]

Before the law Comanche woman was a quasi-chattel; her man was her *baron*. Under the system of contract marriage which prevailed, a girl was bestowed upon a man ofttimes many years her senior and not of her own choosing. According to the ideal pattern she adjusted herself to the arrangement, settling into a smooth and dutiful marital career. It is the expressed belief of the older Indians that such marriages were more successful and lasting than those which were formed of romantic liaison. Unfortunately, one cannot determine the relative percentages of successful marriages for the Comanche. The Comanche law system buttressed this marital arrangement by providing institutionalized instruments for the collection of restituitive damages by any husband whose sexual claim upon his wife was infringed upon by an adulterer or wife-absconder. The husband could mete extreme punishment upon the unfaithful and hapless wife. A marriage had the full protection of the law.

The basic belief that a man's rights in marriage were exclusive (except for the privileges extended to a brother under the anticipatory levirate) and not to be impinged upon unless he had released these rights through recognized divorce, ran into counter currents of custom in the existing notions of romantic marriage (wherein younger couples sought love-mates of their own choosing) and the prevailing behavior of males in the competitive struggle for personal ranking and the attainment of bravery status. The competition for bravery ranking which was institutionalized in coup counting found its opportunity for expression *within* the tribe in the taking of women from their husbands. This threw the wife-taker and the husband into direct conflict. Not raw conflict, however, for as shall be seen, mechanisms for settling the issue without fighting had been developed.

[1] Jerome Frank, *Lawlessness* (Encyclopaedia of the Social Sciences, vol. 10, 1937), p. 227.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

"As soon as they started to carry out the corpse, Chew Up followed after them, repeating his warnings to his aunt. 'Don't wail,' he commanded the bereaved woman. 'If you wail for him, I will kill you. Go bury him, and when you have done it, go back to your own people.'

"The evil medicine man was buried unmourned.

"That night Chew Up himself went to stay with his elder brother. The young man was so sick that he could drink no water—always the sign of a person at death's door. All night long Chew Up held his brother in his arms, until—just as the white dawn came—he died. They wailed for him, and they mourned. The father of Chew Up was a war chief and a rich man. Chew Up explained, 'I am but following the pattern set by my father.'

"What lay behind it all was this: the medicine man uncle had caught his nephew lying with his wife—not in actual intercourse, however. For this reason he had put the curse on him. *Because the quarrel was in the family, no one else could take it up or do anything about it.* (Author's italics.)

"Just as all this quieted down, Chew Up's other elder brother came home from war. (Chew Up was the youngest, the one who died was the middle brother.) The eldest brother admonished Chew Up. 'You have committed the unheard-of thing: you have killed our uncle.'

"And Chew Up replied, 'Is it as nothing that I should sit and watch my brother being murdered? Should I have done nothing?'

"To this his elder brother retorted, 'You have done something terrible. You shall not live long.'

"Chew Up answered back, 'I am going to live a long time.'

"The elder brother was killed not long after, and Chew Up lived to be an old, old man."

The thing that strikes hardest in this history of Chew Up is the way in which it emphasizes so completely the non-criminal nature of homicide. But it is also breath-taking in how fast it moved through the ordinary middle-stage of beseeching the sorcerer to remove the curse. "You are a medicine man, why don't you doctor him?" Not an entreaty, but a sarcasm. Then the death-blow. Here the sorcerer faced a tribal strong-man, a man of wealth and position with the pattern of family pride to uphold. How differently the law worked with such a man on the aggrieved's end of the stick than when it was put in the hands of Salt Worn Out to wield for justice's sake!

Comanche law, because it was a personal and a kin law, *did* swing upon valor and guts. It was a matter of out-weighing whatever power the offender had on his side. In cases of sorcery this was usually done in the attempt to throw counter-medicine into the scale. But unless the counter-medicine was stronger in its supernatural power than the medicine behind

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

671 the curse, its legal value was nil, for it was a sanction without teeth. In
x627 exactly the same way the application of physical force as a sanction turned about the point of relative powers. So in this type of case we found four basic outcomes: 1) where the aggrieved party was a weakling there was no prosecution (Sorcery in this respect presents a contrast to adultery and wife-stealing, wherein the aggrieved had to act. In these latter situations it was purely bravery against bravery, but bravery vs. sorcery seems to have been another thing.); 2) where the prosecution was forceful and so also was defense, the defense being more so, in one instance at least, the prosecution backed down—a primitive "*nol pros*"; 3) where the prosecution was forceful and/or the defendant was weak, the sorcerer was driven out or killed by a party for the defense (In the event of capital punishment through violence we do not know if it would give rise to blood feud, because in the only case which reached the bitter climax, the killing was within the family circle.); 4) where the prosecution was forceful and so also was the defense, the deadlock over the dispute of fact was broken by recourse to the conditional curse on the part of the defendant. The supernatural "tried for guilt," and acquitted or executed the defendant in one act. A reasonable length of time, namely, until the next change in seasons, was allowed for the judgment to take place. The issue was not hurried, but its results were accepted as final.

FORCED CONFESSIONS: THE THIRD DEGREE

x627 It has just been shown how the Comanche utilized divination and con-
684 ditional curse in sorcery. Now let us see how they set about testing marital fidelity. There were various techniques available to the husband as a prosecutor. These were ritualistic and non-ritualistic. The latter were simple and direct third-degree forms. A man took his wife to a lonely spot to build a fire. If the threat of what was coming did not force a confession from the lips of the wife, the husband then held her prone over the fire, lowering her closer and closer to the flames until she gave the information he wanted. Another method was to choke the woman until a confession was forthcoming. Whipping also served the end. One or the other of these methods was used in six out of the twenty-three adultery cases recorded in this study.

Not only was the confession of unfaithfulness forced in this way, but also the naming of the correspondent. On the basis of such confession suit for damages could be begun.

The case of Bone and his wife is illustrative of how evidence given by a witness was reinforced by such confession.

3:Wallace & Hoebel E-4, 5 (1933, 1945) 1952
NO6 Comanche NO6

IX

Government and Law

IN a society as simple and as homogeneous as was that of the Comanches there is little need for the development of governmental institutions. Add to this the extreme individualism of the Comanches, and a situation exists in which neither social needs nor ideology work to stimulate the development of government. Consequently, Comanche government was at a minimum, legal precepts were rudimentary, and the enforcement of the simple substantive law remained the responsibility of individuals rather than of officials.

Just as the Comanche made no attempt to organize a philosophy of religion or to systematize a conception of man's place in nature, so he made no attempt to generalize or formalize the rules underlying his legal system or the constitutional structure of his state. For instance, when That's It was asked about the Comanche peace chiefs, he said, "I hardly know how to tell about them. They never had much to do except to hold the band together."

To the Comanche, law was not an expression of social policy, but rather a series of individual responses to threatening situations. Descriptively we can note the Comanche point of view. Analytically we are not content to stop at this level. The Comanches had more law than they themselves recognized.

Ralph Linton has expressed that thought in these words: "Different cultures show a tremendous amount of difference in the degree to which their patterns are consciously formalized. My experience

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
NO6 Comanche NO6

671 with Polynesians and Comanches illustrates this: Polynesians can give you practically an Emily Post statement of what proper behavior should be on all occasions, whereas Comanches, when asked how they do anything, immediately answer, 'Well, that depends.' They genuinely think of behavior as a range of unlimited, individual, freedom of choice, although when you take a series of examples of behavior, as Hoebel did, you actually find quite a high degree of uniformity. But you have to check Comanche behavior to arrive at this."[1]

In other words, to learn about Comanche law, it is necessary not to talk about "law" when doing field work with the Comanches, but rather, through utilization of the case-law method of legal recording and analysis, to accumulate a sizeable body of case histories of dispute situations from which the regularity of legal patterns can be abstracted.[2]

Before presenting the facts of their law, it is necessary to describe the nature of the Comanche state.

642 The basic principle of Comanche political organization was the constitutional separation of civil and military leadership. For a warlike people this separation was quite remarkable, although, of course, it was a general North American Indian practice for which the Comanches cannot be singled out for credit.

622 The peace chief was known as *paria:*βo and each family encampment had its *paria:*βo, whom we shall call either "peace chief" or "headman." There was reluctance on the part of the Comanches to accord him formal recognition, but genuine recognition of his powers was reflected in the attention given to his advice and in the general subordination to his influence. It was one of these family headmen who was elevated to the position of head peace chief of the band; the remainder of the chiefs functioned as an advisory council for the band as a whole and at the same time maintained their positions as family headmen to their own group of followers. The chief, or headman, was chairman, so to speak, of the group. He was *primus inter pares.*

There is no explicit way of saying how a man became a civil

[1] Ralph Linton in S. S. Sargent and M. W. Smith (eds.) *Culture and Personality,* 123.

[2] Cf. Hoebel, *The Political Organization and Law-Ways of the Comanche Indians,* 181.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
NO6 Comanche NO6

The Comanches

701 The warriors of most of the Plains tribes were organized into a series of fighting societies or military fraternities. These organizations were secondarily arms of the tribal government or, at least, they functioned as strong pressure groups.[10] The Comanches, however, in keeping with their lack of internal segmentation, possessed only the slightest trace of military fraternities. Informants explained that their societies were something like a combination of our present-day army regiment and lodge organization. Their dearth of historical data and the paucity of material, combined with the lack of information on the part of contemporary Comanches, indicates that the associations were not a developed and integrated part of Comanche culture. There is no evidence that they played an important role in social control and government.

642 Such formal government as existed was limited to the activities of the peace chiefs and war leaders, who acted separately or through the medium of the band councils. The Comanches, like almost all of the tribes east of the Rockies, militarists though they were, wanted no military *junta*. They knew the value and need for constitutional separation of civil and military power. From their point of view, that government was best which governed least.

• 671 The law system of the Comanche tribe was primitive but dynamic —and exciting. It lacked the maturity and balance of the Cheyenne way. It was crude and lacking in juridical subtlety, but it was fluid, inventive, and colored with its own ideals of justice.

Comanche law-ways functioned without benefit of courts. As might well be expected, in view of the ambiguity of powers of the political chieftains, there were no public officials endowed with law-speaking or law-enforcing authority. Comanche law was neither legislated nor judge-made. It was hammered out on the hard anvil of individual cases by claimant and defendant pressing the issues in terms of Comanche notions of individual rights and tribal standards of right conduct.

It was almost exclusively a system of private law—a law in which the responsibility for instituting legal actions rested with the aggrieved party—a law in which the aggrieved and his personal supporters had

[10] J. H. Provinse, "The Underlying Sanctions of Plains Indian Society," in F. Eggan (ed.), *Social Organization of North American Tribes*, 341–449.

3:Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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to push the process to its conclusion, or nothing would be done at all to provide relief or redress.

Nevertheless, a system of law it was. It was absolutely sure that certain forms of wrongs would be prosecuted. There were proper procedural patterns to be followed in the prosecution of a case. There were quite specifically understood sanctions to be applied to the different categories of offenses. And if the defendant was adamant beyond the point of reasonableness, he was, after due process, subject to a violent attack upon his person.

The essence of law, whatever specific forms it may take from one social system to another, comprises regularity, force, and official authority. Comanche law-ways had all those essential attributes.

"Dot" Babb's statement that on the whole there was little infringement on the rights of others among the Comanches, that they did not fight, quarrel, and commit murder as did the white man,[11] is contrary to the facts as we know them. The Comanches were most litigious, not, it is true, from any love of going to law for the savor of it, but because they were extreme individualists given to crowding each other in the unceasing struggle to outrank each other in personal prestige. A man could climb the social ladder by piling up a war record at the expense of enemies, and this was the legitimate way. But he could also reach toward his goal by aggressively challenging the status of a rival through stealing his wife, or seducing her, or taking his horse. This was the illegitimate way. It was illegal, but it was also customary enough. Forty-five cases of old-time legal actions arising from adultery and wife stealing alone were recorded from Comanche informants by one of the authors in his study of Comanche law-ways. Of these, twenty-two were wife-absconding cases and twenty-three were cases of simple adultery.

If the Comanches were lawless, it was not through an absence of law, but rather because of a reckless tendency to break the law in the face of certain and severe penalties. Seven of the forty-five erring wives paid the death penalty: four for running off with another man, three for committing adultery. Of the remaining twenty adulteresses, five were mutilated by their husbands: four had the tips of their noses cut off and one had the soles of her feet slashed so that she could not

[11] Babb, *op. cit.*, 102–104.

21: Burnet T-5 (1818-1819) 1954 NO6 Comanche NO6
Texas

[ca. 1818]

175 628 tion of country which custom seems to have appropriated to its more special use and occupancy.

621 622 175 These three great national parties, are subdivided into captaincies or villages, to each of which is appointed a chief, whose distinction seems to consist rather in name than authority. His name however, gives title to the flying village, and is useful in this respect, as some sign of discrimination

621 175 is necessary, and they can derive none from locality. These subdivisions are various and contingent, each member being at liberty to withdraw from one village and unite with another, as caprice or convenience may dictate.

175 221 [231] As the Comanchees do not cultivate the ground, but derive their subsistence from the spontaneous productions of nature, and chiefly from the animal kingdom, they are necessarily migratory, and obliged to change their encampment every ten or fifteen days. The scarcity of game, which is soon taught to avoid their dangerous neighborhood, and the speedy exhaustion of convenient pasturage, which is indispensable to the subsistence of their large herds of mules and horses, are the principal reasons for such frequent removals. When about to abandon a position, they generally

175 202 fire the grass, to give intelligence of their decampment to absentees;—smoke is likewise employed as a telegraph to announce the return of a war party. It is not uncommon to see, at the same time, 8 or 10 of these signals darkening the horizon, and rearing their columns in gloomy grandeur, to the vertex of a serene and brilliant atmosphere.

175 643 The three parties collectively acknowledge one head or grand Chief, who is selected from either party. His appointment is indefinite as to duration and extent of authority, the latter depending more on the force of his personal char-

175 [642] [671] [692] acter, than on the investments of office. Indeed a positive official authority, is not recognized in their crude system of government. They have but few traditionary laws, and these, they are not always capable of enforcing. Compulsion is seldom exercised on a refractory culprit; and when imperious circumstances require it to be done, it is effected by a convention of chiefs, whose personal influences become auxiliary to an otherwise impotent authority.

22: Dacus Q-3 (no date) 1960 NO6 Comanche NO6
(ca. 1870)

[ca. 1870]

and he may mutilate or beat her to the full extent of his capricious will. 593
In certain cases he is even permitted to take her life, without acknowledging responsibility to any one for his conduct. As among civilized people, 684
there are "common women of the tribe," outcasts from respectable Comanche society, just as there are outcasts from Christian society among the civilized people of Europe and America. These "Women" have no rights which Comanche ladies and gentlemen are bound to respect. The condition of slavery, which falls to the lot of all women of the tribe, is intensified in the case of the fallen. The others are slaves of one master only; these have many masters and many mistresses. According to our code of morals, the Comanche cyprian has been guilty of no crime, which all the females of the tribe who have arrived at the age of puberty have not committed. She has been unfaithful to the marriage contract, without consulting the wishes of her husband, and without bringing him any gain, and terribly is she made to suffer for it. She is beaten, with many stripes, [304]
and not infrequently suffers mutilation by having her nose cut off. This fixes the brand of her disgrace; and henceforth she becomes the slave of the tribe. There may always be seen a few of these miserable creatures about a Comanche camp. The women are especially cruel toward them, and take much apparent delight in beating them. And yet these same immaculate maidens and matrons have not once, but many times been made to endure the embrace of any purchaser at the behest of their husbands and fathers.

Custom has established laws among the Comanches as among more civil- 671
ized people. It is a law among them that a wife may be mutilated, or even 593
killed, for the crime of infidelity, and yet husband is not averse to select- 684
ing any number of lovers for her and compelling her to accept them, pro- 837
vided his worldly fortune is advanced thereby.

There is no prudish seclusion of Comanche maidens. They mingle with 834
great freedom among the people of their tribe. They may have their
beaux as well as their white sisters, and the gallants need have no fears of 584
an over-prudent papa, or an irate "big brother." If there is a rough place in the course of the stream of affection, it is not the youth but the maiden that must suffer the castigation. A pony will suffice to satisfy the utmost requirements of the social law.

When a young Comanche gentleman takes it into his head to go a-wooing, 584
he decks himself with a profusion of paint, a gorgeous head-piece made 301
of feathers; dons his finest suit, puts on all the decorations of distinction 291
which he is entitled to wear, which usually consist of a necklace of wild- 237
cats' claws, coyotes' tails, the canine teeth of wolves, elks' teeth, and not

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

Out of apparent weakness emerged the wildest marauding brigandage. The Comanches whipped and drove the Apaches from the southern Plains. They stalemated the Spanish. They decimated the pueblo of Pecos. They ranged far below the Rio Grande on slave- and booty-taking raids into Old Mexico. They blocked the westward expansion of the Texas frontier for several decades. They became "The Spartans of the Prairies." They were rough, tough, aggressive and militant individualists. They gave trouble to all their enemies and to themselves. And in their way, out of the nothingness of Shoshone legal backgrounds they shaped a crude but effective system of law to cope with the clashes of individual with individual within their ranks.

. . .

The basic postulates of the Comanche way of life are simple and few. They express a strong individualism and man-to-man aggressiveness in the following terms:

Postulate I. The individual is supreme in all things.

Postulate II. The self of the male is realized in striving for accumulated war honors, horses, and women.

Postulate III. Women are sexually and economically desirable but are inferior and subordinate to men.

Corollary 1. The sex rights of a husband to his wife are limited to himself and his brothers.

Postulate IV. The strongest social tie is that of brother to brother.

Postulate V. Sexual relations between kin (incest) constitutes subhuman behavior.

Postulate VI. War is essential to the prosperity of the tribe and the individual self-expression of the male.

Postulate VII. The great spirits (Sun and Earth) have powers of "legal" judgment.

Postulate VIII. Each Comanche ought to cooperate with others and help them in their life's activities.

Corollary 1. Altruism and sharing of goods is socially desirable.

Corollary 2. The killing of a fellow tribesman is not permissible.

Postulate IX. Horses, especially favorite horses, have quasi-human personalities.

The simple needs of Comanche society did not impose any great social pressure for governmental controls, and the high value placed upon individual freedom of action also worked to hold government at a minimum. If a Comanche had been invited to subscribe to a political slogan, he would have given his assent to the proposition that "that government is best which governs least." So fully was this precept expressed in a lack of political action that That's It, one of the most acute of our Comanche informants,

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

ambiguity of powers of the chieftains, it is not surprising that in this tribe there were no public officials endowed with law-speaking or law-enforcing authority. The law of the Comanche was neither legislative nor judge-made. It was, as we have written elsewhere, "hammered out on the hard anvil of individual cases by claimant and defendant pressing the issues in terms of Comanche notions of individual rights and tribal standards of right conduct."[3] Thus it was almost exclusively a system of private law: a system of individual responsibility and individual action; a law that was case made.

The Comanches surely had no love of legalistic formalism, but they were a most litigious people. Their way of life engendered considerable internal friction. It might almost be said that the Comanches savored trouble-making. Their own accounts of their war parties as often as not begin with a laconic "once there was a bunch of Comanches out looking for trouble."

So, also, a man was often moved to take steps that made trouble. He stole another man's wife, or he secretly consorted with her. When this was done, the husband had no choice but to initiate legal action. Magnanimity on his part would bring no praise, for there was no doctrine of turning the other cheek. A man's status turned on his bravery, and for an offended husband not to act reflected merely on his courage; it was seen not as an act of forgiveness but as an expression of lily-livered cowardice. Wife-stealing and adultery were not the result of any sexual deprivation on the part of the offender; they were in effect deliberate challenges to the prestige of the husband. As such, he was forced in the eyes of the people to respond to them.

The way was open to him in legal action. Custom impelled men to violate the marital rights of other men. The culture also provided a legal remedy for the wronged man. Except in a few rare and extreme cases, the wrongdoer fully expected to pay the legal price—and did so without forcing the injured husband to a violent bodily attack. He knew well that he would have to pay a price, but he also knew that if he was steadfast and could outface the other man, the price would be light. In that case he would come out of the affair with greater public respect than the husband and he might get the woman to boot. So he took the risk.

In the memory of a dozen old Comanche informants still living in 1933 forty-five cases of old-time legal actions involving wife-stealing and adultery were still vivid enough for detailed recording.[4] Twenty-two were wife-absconding cases and twenty-three involved adultery.

As it takes two to make a contract it also takes two to commit adultery or a wife-absconding (Comanche women were not forcibly stolen). The woman's role in these affairs was very frequently an expression of individual revolt against the workings of Postulate III.[A] Theoretically in all instances,

[3] Wallace and Hoebel, p. 224.

[4] Cf. Hoebel, *Political Organization and Law-ways*, pp. 49–59.

A [see category 181, p. 69--Analyst]